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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|--|-------------|----------------------|-----------------------|------------------|
| 10/535,330 | 05/18/2005 | Behzad Sadeghi | SONN:073US | 3891 |
| 32425 | 7590 | 06/21/2006 | EXAMINER | |
| FULBRIGHT & JAWORSKI L.L.P. 600 CONGRESS AVE. SUITE 2400 AUSTIN, TX 78701 | | | ANTHONY, JOSEPH DAVID | |
| | | | ART UNIT | PAPER NUMBER |
| | | | 1714 | |

DATE MAILED: 06/21/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

| | | | |
|------------------------------|------------------------|---------------------|--|
| Office Action Summary | Application No. | Applicant(s) | |
| | 10/535,330 | SADEGHI ET AL. | |
| | Examiner | Art Unit | |
| | Joseph D. Anthony | 1714 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 05/18/05 as Preliminary Amendment.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 9-18 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 9-18 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) Notice of References Cited (PTO-892)
- 2) Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) Notice of Informal Patent Application (PTO-152)
- 6) Other: _____

DETAILED ACTION

Oath/Declaration

1. A new oath or declaration is required because the declaration as filed in the application is not in the English Language. The wording of an oath or declaration cannot be amended. If the wording is not correct or if all of the required affirmations have not been made or if it has not been properly subscribed to, a new oath or declaration is required. The new oath or declaration must properly identify the application of which it is to form a part, preferably by application number and filing date in the body of the oath or declaration. See MPEP §§ 602.01 and 602.02.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 9-18 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. Applicant's originally filed specification completely fails to define the chemical names for the antioxidants represented by the following abbreviations: NADH, NADPH, FADH₂, FMNH₂, FADH, and FMNH as set forth in independent claim 9. This is a truly unbelievable omission that renders the claims

totally indefinite in regards to the metes and bounds of the claimed subject matter, and thus renders the claims totally unsearchable for prior-art since one having ordinary skill in the art would have no idea what one is searching and looking for. Applicant is advised that in response to this rejection not to add new matter to the specification and/or claims. The insertion of definitions into the specification and/or claims for each of NADH, NADPH, FADH₂, FMNH₂, FADH, and FMNH would of course constitute new matter without absolute proof that said definitions and abbreviations are intrinsically linked together. Applicant is further advised that in response to this rejection that any arguments/showings applicant makes in an attempt to define NADH, NADPH, FADH₂, FMNH₂, FADH, and FMNH will have to establish an intrinsic, clear and unambiguous nexus that said NADH, NADPH, FADH₂, FMNH₂, FADH, and FMNH antioxidants components must be what applicant is asserting/showing them to be. This would seem to be an extremely tall order and thus applicant should very seriously consider filing a C.I.P. application that clearly defines what is meant by NADH, NADPH, FADH₂, FMNH₂, FADH, and FMNH if applicant realistically wants to pursue the invention further.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 9-18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Independent claim 9 is totally indefinite in regards to what antioxidant chemical compounds are being claimed under the abbreviations: NADH, NADPH, FADH₂, FMNH₂, FADH, and FMNH. Because of this, no meaningful prior-art search is possible since one having ordinary skill in the art would have no idea what one is searching and looking for.

Independent claim 9 is further indefinite because in line 6 of the claim, after the word "antioxidant" it seems that – A-- should be inserted.

Claims 10-18 are being rejected here because they are dependent on a rejected base claim.

Claim Objections

6. Claim 10 is objected to under 37 CFR 1.75(c), as being of improper dependent form for failing to further limit the subject matter of a previous claim. Applicant is required to cancel the claim(s), or amend the claim(s) to place the claim(s) in proper dependent form, or rewrite the claim(s) in independent form. Claim 10 is objected to because the phrase: "further comprising an oxygen-sequestering substance" is not deemed to further limit the composition of independent claim 9 since the antioxidants of claim 9 are deemed to fall within the functional claim language of "oxygen-sequestering substances themselves.

Prior-Art Cited But Not Applied

7. Any prior-art reference which is cited on FORM PTO-892 but not applied, is cited only to show the general state of the prior-art at the time of applicant's invention.

Examiner Information

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Examiner Joseph D. Anthony whose telephone number is (571) 272-1117. If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Vasu Jagannathan, can be reached on (571) 272-1119. The centralized FAX machine number is (571) 273-8300. All other papers received by FAX will be treated as Official communications and cannot be immediately handled by the Examiner.



Joseph D. Anthony
Primary Patent Examiner
Art Unit 1714

